

CALIFORNIA COASTAL COMMISSION

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49th Day: Waived
Staff: SLB – SF
Staff Report: February 14, 2003
Hearing Date: March 6, 2002

**STAFF REPORT – APPEAL
SUBSTANTIAL ISSUE & DE NOVO**

APPEAL NO.: A-2-MAR-02-024

APPLICANTS: Marka Hansen & Joe Brubaker

LOCAL GOVERNMENT: Marin County

ACTION: Approved with Conditions

PROJECT LOCATION: 17500 State Highway 1, Marshall
APN 106-220-22

PROJECT DESCRIPTION: Construction of a one story, 23-foot high, 3,113-square-foot single family residence, 336-square-foot detached guest house, 937-square-foot detached garage and a garden storage building and 26.5-foot high, 1,920-square-foot detached barn/equipment storage building.

APPELLANTS: Commissioners Sara Wan and Christina L. Desser
Environmental Action Committee of West Marin

RECOMMENDATION: Substantial Issue and Denial

1.0 EXECUTIVE SUMMARY**1.1 Summary of Staff Recommendation: Substantial Issue**

The staff recommends that the Commission, after public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed, and that the Commission conduct a *de novo* review of the proposed development.

The approved development includes a one story, 23-foot high, 3,113-square-foot single-family residence, a 336-square-foot detached guesthouse, a 937-square-foot detached garage/garden storage building and a 26.5-foot high, 1,920-square-foot detached

barn/equipment storage building on a vacant 206.9-square-foot parcel. The Commission received two appeals of the County's approval of the proposed development contending that the approved development: (1) is inconsistent with LCP visual resource policies because it is sited in a visually prominent location on the parcel, is not compatible with the character of the surrounding natural environment, and obstructs significant views as seen from public viewing places; (2) does not conform to the agricultural resource policies and zoning standards because it is not located close to the existing road, does not minimize roadway length, and divides agricultural land; (3) exceeds the height limit for accessory structures in the C-APZ district; and (4) is visible from private property.

Staff recommends that the Commission find that the appeals of the development approved by Marin County raise substantial issues regarding the conformity of the approved development to the visual resource and agricultural protection provisions of the Marin County Unit II Local Coastal Program. Staff also recommends that the Commission further find that the appeals do not raise a substantial issue concerning height limits for accessory structures in the C-APZ zoning district of the Marin County Unit II Local Coastal Program. Furthermore, staff recommends that the Commission find that the contention regarding impacts to private views is an invalid ground for appeal.

The motion to adopt the staff recommendation of Substantial Issue is found on page 3.

1.2 Summary of Staff Recommendation *De Novo*: Denial

The staff recommends that the Commission deny the coastal development permit application for the proposed project on the basis that the project is inconsistent with the County's certified LCP.

As proposed, the residential development is not accessory, incidental or in support of the agricultural use of the property and would not protect and enhance the continued agricultural use and contribute to agricultural viability of the property as required by Zoning Code Sections 22.57.032 and 22.57.036. The project is also inconsistent with LCP Agricultural Resource Policy 5(b) and Zoning Code Sections 22.57.035(1), 22.57.024(1)(a), and 22.57.024(1)(d) because it is not located in the most accessible portion of the site or near existing roads, does not minimize roadway length, grading, and the extension of utility lines, and does not maximize the amount of undivided agricultural land. Furthermore, the proposed development does not include a Master Plan as required by Agricultural Resource Policy 4 and Zoning Code Standard 22.57.32. Lastly, the development is neither designed nor sited in a manner that screens it from public viewing places and would result in a roadway that stretches most the length of the of the property, thereby significantly impacting visual resources inconsistent with LCP Visual Resource Policy 3(a), Agricultural Resource Policy 5(b) and Zoning Code Sections 22.57.035(1) and 22.57.024(1)(a). Therefore, staff recommends that the Commission deny the permit application.

The Motion to adopt the Staff Recommendation of Denial is found on page 16.

PART ONE- SUBSTANTIAL ISSUE

2.0 STAFF RECOMMENDATION

Substantial Issue

The staff recommends that the Commission determine that substantial issue exists with respect to the grounds on which the appeal has been filed.

Motion

I move that the Commission determine that Appeal No. A2-MAR-02-024 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.

Staff Recommendation

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution to Find Substantial Issue

The Commission hereby finds that Appeal No. A-2-MAR-02-024 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

3.0 PROJECT SETTING AND DESCRIPTION

3.1 Project Location and Site Description

The approved development is located on a 206.9-acre parcel located at 17500 State Highway 1 in Marshall, Marin County. The property is zoned C-APZ-60 (Coastal, Agricultural Projection zone, Planned District, one primary dwelling unit per 60 acres maximum density). The site is located on the east shore of Tomales Bay approximately two miles south of the community of Marshall and 0.2 miles south of the Marconi Conference Center, owned by the California Department of Parks and Recreation (Exhibit 1, Location Map and Exhibit 2, Vicinity Map). There are no improvements on the vacant property, with the exception of one well and deteriorated cattle pens left from the historic cattle grazing operation. Access to this site is from an unimproved on-grade two-track farm road from State Highway 1. Elevations of the property run upslope from approximately 50 feet at the highway to 350 to 370 feet at the building site, to 430 feet at the ridge top location of the well and then down slope to 400 feet at the rear (northeast) property boundary. The proposed building site is located approximately two-thirds of the way up the hill from State Highway 1 (Exhibit 3, Site Plan and Elevations). The San Andreas Fault lies approximately one mile southwest of the property along Tomales Bay. A major ravine located approximately 200 feet below the building site conveys subsurface runoff during the rainy season. The ravine supports a narrow, dense bank of California bay laurel trees.

3.2 Project Description

The approved development consists of a one story, 23-foot high, 3,113-square-foot single-family residence, a 336-square-foot detached guesthouse, and a 937-square-foot detached garage/garden storage building that form a complex around an approximately 4,600-square-foot central courtyard. As approved, the residence has a maximum height of 23 feet above the natural grade and is located on the upper portion of the site. It would be served by an on-site sewage disposal system on the east side of the parcel. The approved development also includes a 1,920-square-foot detached barn/equipment storage building, which is sited approximately 250 feet downslope and southwest of the residence (Exhibit 3, Site Plan and Elevations). The barn has a maximum height of 26.5 feet on the downslope end (west) and 23 feet on the upslope end (east). An approximately 12-foot wide, 3,720-foot long driveway would provide access to the residential site from State Highway One, within the existing historic, two-track farm road. The driveway will require 264 cubic yards of cut and 1,589 cubic yards of fill to meet the County standards and will be paved with gravel. The entrance to the property would be located at the southeast corner of the property. The residence would be serviced by two onsite wells, one located upslope of the building site, and one located downslope at the southern end of the property.

4.0 APPEAL PROCESS

4.1 Local Government Action

On October 29, 2001, the Marin County Planning Commission denied the proposed Hansen/Brubaker project consisting of a two-story, 3,467 square-foot single-family residence, an attached 608 square-foot root cellar, a 336-square-foot guest room, and a detached 2,720 square-foot two-story structure consisting of a barn, garage, and loft. The Planning Commission denied the proposed residential development because it would not result in the primary use of the parcel for agricultural production and the proposed residential development would not support the agricultural use of the property.

On November 5, 2001, the project applicants filed a timely appeal of the Planning Commission's denial to the Board of Supervisors. Subsequent to the Planning Commission's decision and the filing of the appeal, the applicant submitted modified development plans and a revised Agricultural Management Plan with an executed lease for livestock operation on the subject property to address the issues raised by the Planning Commission. The modified project consisted of a 3,113-square-foot single-family residence, a 336-square-foot detached guesthouse, a 937-square-foot detached garage/garden storage building, a 26.5-foot high, 1,920-square-foot detached barn/equipment storage building and a 3,720-foot long driveway.

On October 15, 2002, the Marin County Board of Supervisors conditionally approved the coastal development permit application for the modified project.

4.2 Filing of Appeal

On November 4, 2002, the Commission received notice of the County's final action approving a coastal development permit for the project. The Commission's appeal period commenced the following working day and ran for ten working days thereafter (November 5 through November 19, 2002). On November 15, 2002, the Commission received an appeal from the Environmental Action Committee of West Marin (EAC), and on November 19, 2002, the Commission received a second appeal from Commissioners Sara Wan and Christine Desser (Exhibit 4, Appeal by

Commissioners Wan and Desser and Exhibit 5, Appeal by EAC). Following receipt of each of these appeals, the Commission mailed a notification of appeal to the County and the applicants.

Pursuant to Section 30621 of the Coastal Act, an appeal hearing must be set within 49 days from the date an appeal of a locally issued coastal development permit is filed. The appeal on the above-described decision was filed on November 15, 2002. The 49th day was January 3, 2003. The only Commission meetings within the 49-day period were, December 10-13, 2002.

In accordance with the California Code of Regulations, on November 5, 2002, staff requested all relevant documents and materials regarding the subject approval from the County to enable staff to analyze the appeal and prepare a recommendation as to whether a substantial issue exists. The regulations provide that a local government has five working days from receipt of such a request from the Commission to provide the relevant documents and materials. The Commission received the local record from the County on December 5, 2002. Consequently, the County permit file information had not been received as of November 22, 2002, the day of the mailing of staff reports to the Commission and interested parties on items on the Commission's December 2002 meeting agenda. Therefore, the requested information was not received in time for the staff to review the information for completeness or prepare a recommendation on the substantial issue question. Consistent with Section 13112 of the California Code of Regulations, since the Commission did not receive the requested documents and materials, Commission staff was prepared to recommend that the Commission open and continue the hearing. On December 7, 2002, the applicants waived their right to a hearing within 49 days of the date the appeal was filed, obviating the need to open and continue a hearing on the December agenda.

4.3 Appeals Under the Coastal Act

After certification of local coastal programs, the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits (Coastal Act Section 30603).

Coastal Act Section 30603 provides, in applicable part, that an action taken by a local government on a coastal development permit application may be appealed to the Coastal Commission for certain kinds of developments, including the approval of developments located within certain geographic appeal areas, such as those located between the sea and the first public road paralleling the sea, or within 300 feet of the mean high tide line or inland extent of any beach or top of the seaward face of a coastal bluff; or in a sensitive coastal resource area; or located within 100 feet of any wetland, estuary, or stream. Developments approved by counties may be appealed if they are not designated as the "principal permitted use" under the certified LCP. Developments that constitute a major public works or a major energy facility may also be appealed, whether they are approved or denied by the local government.

The approved development is located on property zoned C-APZ-60 (Coastal, Agricultural Production Zone, Planned District, one primary dwelling unit per 60 acres maximum density) and is not the principally permitted use of this zoning district for purposes of determine appealability to the Commission.

LUP Agriculture Resource Policy 3 states:

The intent of the Agricultural Production Zone is to preserve lands within the zone for agricultural use. The principal use of lands in the C-APZ Districts shall be agricultural.

Development shall be accessory, incidental, or in support of agricultural land uses...
[Emphasis added.]

Language equivalent to that cited above is found in Zoning Code Section 22.57.031. As indicated by Agricultural Resource Policy 3 and Zoning Code Section 22.57.031 of the certified LCP, the principal use of C-APZ land is agricultural. The approved residential development is not the principally intended use for agricultural land.

Under Zoning Code Section 22.57.032 C-APZ, uses can be classified as principally permitted uses subject to the approval of a master plan. Zoning Code Section 22.57.032 states:

Principal Permitted Uses. The following uses are permitted in all C-APZ districts subject to an approved master plan:

- 1. Agricultural Uses. For the purposes of the coastal agricultural production zone, agricultural uses are defined as uses of land to grow and/or produce agricultural commodities for commercial purposes, including:*
 - a. Livestock and poultry: cattle, sheep, poultry, goats, rabbits, horses unless they are the primary animals raised;*
 - b. Livestock and poultry products: milk, wool, eggs;*
 - c. Field, fruit, nut and vegetable crops: hay, grain, silage, pasture, fruits, nuts and vegetables;*
 - d. Nursery products: nursery crops, cut plants.*
- 2. One single-family dwelling per parcel. Parcel is defined as all contiguous assessor's parcels under common ownership (unless legally divided as per Title 20, Marin County Code).*
- 3. Accessory structures or uses appurtenant and necessary to the operation of agricultural uses, other than dwelling units of any kind; but, including barns, fences, stables, corrals, coops and pens, and utility facilities.*
- 4. Bed and breakfast operations as defined in Section 22.02.103, for such operations which offer or provide not more than three guest rooms.*

Under Coastal Act Section 30603 only one use can be the designated “principally permitted use” for purposes of appeal. Since Zoning Code Section 22.57.032 allows for the designation of more than one principally permitted use, the approved residential development cannot be considered as the principally permitted use of the agriculturally zoned site. Moreover, even if, residential development may be considered a principally permitted use if it is the subject of an approved master plan, no master plan was prepared for the approved development. Thus, the approved residential development cannot here be considered a principally permitted use. Therefore, the approved development is appealable under Section 30603(a)(4) of the Coastal Act.

In addition, in accordance with Coastal Act Section 30603(a)(1) development approved by a local government within 300 feet of the inland extent of any beach or the mean high tide line of the sea is appealable to the Commission. The approved access road is within 300 feet of the mean high tide line. Therefore, the approved development is also appealable under Section 30603(a)(1) of the Coastal Act. Pursuant to Section 30603(b)(1) of the Coastal Act, an appeal for development in this location is limited to the allegation that the development does not conform to the standards set forth in the certified LCP.

If the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons eligible to testify before the Commission on the substantial issue question are the applicant, persons who made their views known before the local government (or their representatives), and the local government. Testimony from other persons regarding the substantial issue question must be submitted to the Commission or the Executive Director in writing.

It takes a majority of the Commissioners present to find that no substantial issue is raised. Unless it is determined that the project raises no substantial issue, the Commission will conduct a full de novo public hearing on the merits of the project at the same or subsequent hearing. If the Commission conducts a de novo hearing on the appeal, the applicable test under Coastal Act Section 30604 would be whether the development is in conformance with the certified Local Coastal Program and the public access and recreation policies of the Coastal Act.

4.4 Standard of Review

Public Resources Code Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the Commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

The term *substantial issue* is not defined in the Coastal Act or its implementing regulations. The Commission's regulations simply indicate that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Commission Regulations, Section 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP and with the public access policies of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretation of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

If the Commission chooses not to hear an appeal, appellant nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to California Code of Civil Procedure, Section 1094.5.

5.0 SUBSTANTIAL ISSUE ANALYSIS

5.1 Appellants' Contentions

The Coastal Commission received two separate appeals on the approved development. The full text of the appeals is included in Exhibits 4 and 5. Below is a summary of the appellants' contentions.

The appeal filed by Commissioners Wan and Desser includes the following contentions (Exhibit 4):

- The approved development is inconsistent with LCP Visual Resource Policies because it is sited in a visually prominent location on the parcel, and is not compatible with the visual character of the surrounding area.
- The approved development does not conform to the development siting standards for C-APZ zoned parcels because it is not sited close to existing roads and sited to minimize impacts on scenic resources.
- The approved development does not conform to the road design standards of the LCP because it neither minimizes roadway length nor maximizes the amount of undivided agricultural land.
- An alternative location identified by County staff would have less impact on visual resources and is closer to Highway One.

The appeal filed by Environmental Action Committee of West Marin (EAC) includes the following contentions (Exhibit 5):

- The approved development is inconsistent with the visual resource protection policies of the LCP because it will have significant adverse visual impacts on the open rolling grasslands east of the bay and will be visible from many parts of nearby County, State, and Federal parklands, as well as private property.
- The development does not conform to the LCP agricultural resource protection policies because it is not located close to the existing road and does not minimize impacts on scenic resources.
- The 25-foot height of the barn exceeds the height limit for accessory structures in C-APZ districts.
- The approved development is visible from private property.
- The alternative building site, identified by County staff, would reduce considerably the length of driveway and reduce visual impacts.

In this case, for reasons further specified below, the Commission exercises its discretion and determines that the appeals of the development approved by the County raise a substantial issue of conformity of the approved development with the certified LCP.

5.2 Appellants Contentions that Raise Substantial Issue

5.2.1 Agricultural Resources

Contention

Appellants Wan and Desser contend that the approved development is inconsistent with the road design standards of Zoning Section 22.57.024(d) for agriculturally zoned parcels because the location of the development does not minimize roadway length thereby maximizing undivided agricultural land. They state:

“As approved, the development is sited such that a 3,720-foot long driveway, approximately two-thirds of a mile, is necessary to access the site from Highway One. Furthermore, the driveway bisects the property. Thus, the approved development does not minimize roadway length and undivided agricultural land [maximize the amount of undivided agricultural land], and therefore, is inconsistent with LCP Zoning Section 22.57.024(d).”

Due to the location of the approved development and the resulting driveway length, the appellants also assert that the approved development is inconsistent with Zoning Code Sections 22.57.24(a) and 22.57.30.

In addition, Appellant EAC contends that the approved development is inconsistent with the Marin County Unit II LCP Agricultural Resource Policy 5(b) because the development is located far from existing roads.

Please see Exhibits 4 and 5 for full text of the appeal

Applicable Policies

LUP Agriculture Resource Policy 5(b) states:

All development shall be clustered to retain the maximum amount of land in agricultural production or available for agricultural use. Development, including all land converted from agricultural use such as roads and residential support facilities, shall be clustered on no more than five percent of the gross acreage, to the extent feasible, with the remaining acreage to be left in agricultural production and/or open space. Development shall be located close to existing roads and shall be sited to minimize impacts on scenic resources, wildlife habitat and streams, and adjacent agricultural operations. [Emphasis added.]

Zoning Code Section 22.57.024(1)(a) and (1)(d) C-ARP (Coastal Agricultural, Residential, Planned Districts) Design Standards states in relevant part:

- a. *... In areas where usable agricultural land exists, residential development shall be clustered or sited so as to minimize disruption of existing or possible future agricultural uses.*
- ...
- d. *Roads, Driveways and Utilities. The development of roads, driveways and utilities shall conform to the applicable standards contained in Title 24 of this code, including but not limited to Sections 24.04.020 through 24.04.320 (Roads and Driveways), and Sections 24.04.840 through 24.04.860 (Utilities). In areas with undeveloped agricultural land, efforts shall be made to keep road and driveway construction, grading and utility extensions to a minimum. This shall be accomplished through clustering and siting development so as to minimize roadway length and maximize the amount of undivided agricultural land. [Emphasis added.]*

Zoning Code Section 22.57.035(1) C-APZ -- Coastal Agricultural Production Zone Districts Development Standards and Requirements states:

All development shall be clustered to retain the maximum amount of land in agricultural production or available for agricultural use. Development, including all land converted from agricultural use such as roads and residential support facilities, shall be clustered on no more than five percent of the gross acreage, to the extent feasible, with the remaining acreage to be left in agricultural production and/or open space. Development shall be located close to existing roads and shall be sited to minimize impacts on scenic resources, wildlife habitat and streams, and adjacent agricultural operations. [Emphasis added.]

Discussion

As discussed in Section 3.1, the property is zoned C-APZ-60 (Coastal, Agricultural Production Zone, Planned District, one primary dwelling unit per 60 acres maximum density). The Marin County Unit II LCP contains policies and standards that are intended to protect Marin County's significant agricultural resources. The Commission must examine whether the appellants' contention raises a substantial issue of conformity of the approved development with Agricultural Resources Policy 5(b) and Zoning Code Sections 22.57.024(1)(a), 22.57.024(1)(d), and 22.57.035(1).

Both Agricultural Resources Policy 5(b) and Zoning Code Section 22.57.035(1) require that development on agricultural land be located close to existing roads. Zoning Code Section 22.57.024(1)(a) requires that development be located in the most accessible portion of the site. The approved development is located such that a 3,720-foot long driveway is required to access the residence. Since the approved development is sited far from the Highway One, approximately two-thirds of a mile away, it raises significant questions of conformity with LCP Agricultural Resource Policy 5(b) and Zoning Code Sections 22.57.24(1)(a) and 22.57.035(1).

Zoning Code Section 22.57.024(1)(d) requires that in areas with undeveloped agricultural land, efforts be made to keep road and driveway construction, grading and utility extensions to a minimum through clustering and siting development so as to minimize roadway length and maximize the amount of undivided agricultural land. While the development uses approximately one percent of the gross acreage of the property, and is relatively clustered, the approved development is sited in the upper northern portion of the site, and is not clustered near the road (State Highway 1). As noted by the appellants, this location thus requires the construction of a 3,720-foot long road to access the building site. In addition to the long driveway, the location of the approved building site will require the extension of utility lines approximately two-thirds of a mile, and the driveway will require a minimum of 264 cubic yards of cut and 1,589 cubic yards of fill to meet the County standards. Furthermore, the road will bisect the agricultural property.

Because the approved project includes a driveway that requires over 1,500 cubic yards of cut and fill, and utility extensions that measure approximately two-thirds of a mile in length, and the location of the building site is such that the driveway bisects the agricultural land, the Commission finds that the appeal raises a substantial issue with respect to the conformance of the approved project with the requirements of Zoning Code Section 22.57.024(1)(d) that developments should be sited to minimize roadway length and maximize undivided agricultural land.

5.2.2 Visual Resources

Contention

Appellant EAC contends that the approved development will have significant adverse visual impacts on the open rolling grasslands east of Tomales Bay and that it will be visible from many parts of nearby County, State, and Federal parklands, inconsistent with Marin County's Unit II New Development and Land Use Visual Resource Policy 3(a). The appellant further states:

"The approved development will have a widespread impact, including the potential for disruption of the view shed from such sensitive sites as Tomales Bay, Chicken Ranch Beach, Heart's Desire Beach, Shell Beach, Tomales Point trail, Mount Vision and Point Reyes Hill."

Appellant EAC also asserts that the approved development is inconsistent with the Marin County Unit II LCP Agricultural Resource Policy 5(b) because it is not sited to minimize impacts on scenic resources. EAC contends:

"This development is far from the road. The driveway is two-thirds of a mile long. The development mars the nearly pristine view of the rolling hills on the east side of Tomales Bay. The main house, a guest house, garage, and garden storage building surround a courtyard to form a roughly 9600 square foot compound, along with a nearby 1920 square foot barn/storage building. Thus, although the individual buildings are not massive, they are linked by walls, patios, and walkways so as to create a large visual impact."

Appellants Wan and Desser further contend that the approved development is sited in a visually prominent location on the parcel, and is not compatible with the character of the surrounding area, in conflict with Unit II LCP Visual Resource Policy 3(a). They also assert that the approved development is inconsistent with the development siting standards for C-APZ zoned parcels set forth in Sections 22.57.24 and 22.57.30 because it is not located in the least visually prominent portion of the site that would minimize impacts to scenic resources. They state:

"... locating the development on the uppermost portion of the site does not minimize the visibility of the structures; rather it impacts the scenic quality of the hillside from various public-viewing points."

Appellants EAC, Wan, and Desser also assert that an alternative building site, identified, but not thoroughly investigated by the County, would have less impact on visual resources.

Please see Exhibits 4 and 5 for full text of the appeals.

Applicable Policies

LUP New Development and Land Use Visual Resource Policy 3(a) states:

The height, scale, and design of new structures shall be compatible with the character of the surrounding natural or built environment. Structures shall be designed to follow the natural contours of the landscape and sited so as not to obstruct significant views as seen from public viewing places. [Emphasis added.]

LUP Agriculture Resource Policy 5(b) states in relevant part:

Development shall be located close to existing roads and shall be sited to minimize impacts on scenic resources, wildlife habitat and streams, and adjacent agricultural operations. [Emphasis added.]

Zoning Code Section 22.57.035(1) C-APZ -- Coastal agricultural production zone districts Development Standards and Requirements states in relevant part:

Development shall be located close to existing roads and shall be sited to minimize impacts on scenic resources, wildlife habitat and streams, and adjacent agricultural operations. [Emphasis added.]

Zoning Code Section 22.57.024(1)(a) C-ARP (Coastal agricultural, residential, planned districts) Design Standards states in relevant part:

Clustering. Buildings shall be clustered or sited in the most accessible, least visually prominent, and most geologically stable portion or portions of the site. Clustering or siting buildings in the least visually prominent portion or portions of the site is especially important on open grassy hillsides. In these areas, the prominence of construction shall be minimized by placing buildings so that they will be screened by existing vegetation, rock outcroppings or depressions in topography. [Emphasis added.]

Discussion

The approved project is located on a 206.9-acre parcel immediately east of Tomales Bay and State Highway 1. The landscape east of Tomales Bay consists of relatively pristine open grassy hillsides with some forested drainage ravines. The hillsides create a scenic panorama, which is visible from many public-viewing locations including State and National Parks and State Highway 1. The Unit II LCP places specific importance on the scenic qualities of this landscape and emphasizes the sensitivity of the visual resource it represents:

Tomales Bay and adjacent lands in the Unit II coastal zone form a scenic panorama of unusual beauty and contrast. The magnificent visual character of Unit II lands is a major attraction to the many tourists who visit the area, as well as to the people who live there. New development in sensitive visual areas, such as along the shoreline of Tomales Bay and on the open rolling grasslands east of the Bay, has the potential for significant adverse visual impacts unless very carefully sited and designed. [Emphasis added.]

As stated in the LCP, protection of the scenic quality of grasslands east of Tomales Bay is an issue of regional importance. In considering whether the appeals raise a substantial issue, the Commission must be concerned with the precedential value of the County's action. The hillside ranchlands east of Tomales Bay are mostly undeveloped. At this time, one other pending permit application for residential development also has the potential to significantly alter the scenic quality and visual character of this historically agricultural area.

LUP Visual Resource Policy 3(a) requires that the height, scale, and design of new structures are compatible with the character of the surrounding natural or built environment, and that structures

are designed to follow the natural contours of the landscape and are sited so as not to obstruct significant views as seen from public viewing places.

Both LUP Agriculture Resource Policy 5(b) and Zoning Code Section 22.57.035(1) require that on agricultural parcels development be located close to existing roads and sited to minimize impacts on scenic resources. Zoning Code Section 22.57.024(1)(a) further requires that buildings be clustered or sited in the least visually prominent portion or portions of the site and that clustering or siting buildings in the least visually prominent portion or portions of the site is especially important on open grassy hillsides.

In terms of the built environment of the area, existing residential development in this area is primarily concentrated along the shoreline of Tomales Bay and at the base of the hillsides just west of State Highway 1. Commission staff has not inventoried the size, scale, and design of existing residential development in the area, but development near the highway is generally of ranch or Victorian style and of moderate size. Development located at higher elevations consists principally of structures associated with agricultural operations. Marin County staff's memorandum to the Planning Commission dated October 24, 2001 states that a review of County permits indicates that the larger agricultural parcels along State Highway 1 within the surrounding area zoned C-APZ-60 are vacant parcels with the exception of a 60-acre parcel north of the project site. This parcel north of the project site is developed with a 2,500 square-foot residence and an 800 square-foot barn. As discussed in Section 3.2, the proposed development consists of approximately 4,386 square feet of development surrounding an approximately 4,600-square-foot central courtyard. The development would effectively create a nearly 10,000-square foot compound. A comparison of the size of existing residential development indicates that the proposed project is of a much larger scale, and is thus inconsistent with LCP Visual Resource Policy 3(a).

The project also raises a substantial issue with respect to its compatibility with the natural environment. The project would be visible from public viewing places. As proposed, the development would be located approximately two-thirds of a mile away from State Highway 1 on the upper portion of the property. An existing stand of California bay laurel trees downslope of the building site would serve as partial screening for the proposed development; however, portions of the residential development would still be visible from public locations such as Point Reyes National Seashore and the waters of Tomales Bay. As discussed in the de novo findings, it may be possible to design a project in the approved location that is not visible. In addition, the improvement of the historic farm road will make the road more visible. Thus, the approved design of the project raises a substantial issue with respect to whether it has minimized visual impacts. Similarly, inasmuch as the project's visual impacts could be further minimized, it is not compatible with the natural environment of the Tomales Bay landscape.

In the addition to the siting and design questions in the approved location, there are alternative building sites that would better conform to the siting requirements of the LCP. For example, the development could be sited at the lower portion of the property adjacent to Highway 1 as required by LUP Agriculture Resource Policy 5(b) and Zoning Code Section 22.57.035(1) C-APZ. Clustering the development near the highway would substantially reduce the length of the access road and would minimize the visual impacts of the development as viewed from Point Reyes and other public viewing areas. In addition, at least for purposes of minimizing the visual

obstruction from public viewing areas, the development could be sited on the other side of the ridgeline at the southeastern portion of the property where the structures would be entirely out of the viewshed. However, this alternative may raise other issues of conformity with LCP agricultural policies and zoning standards related to location of development near existing roads and impacts to agricultural resources. In any event, there is a significant question as to whether the approved development is sited in the least visually prominent location of the site as required by the LCP.

Based on the foregoing, the Commission finds that the appeals raise a substantial issue regarding the conformity of the approved project with Visual Resource Policy 3(a), Agriculture Resource Policy 5(b), and Zoning Code Sections 22.57.035(1) and 22.57.024(1)(a).

5.3 Appellants Contentions that Raise No Substantial Issue

5.3.1 Height Limits

Contention

Appellant EAC contends that the 25-foot height of the approved barn exceeds the height limit for accessory structures in C-APZ districts.

Applicable Policies

Zoning Code Section 22.57.024(1)(g)(B) C-ARP (Coastal agricultural, residential, planned districts) Design Standards states in relevant part:

No part of a residential building shall exceed twenty-five feet in height above natural grade, and no accessory structure, including water tanks, shall exceed fifteen feet in height above natural grade... Farm and agricultural buildings located down from ridgetops may exceed these height limits upon design review approval. [Emphasis added.]

Discussion

Zoning Code Section 22.57.024(1)(g)(B) limits the height of accessory structures on C-APZ zoned land to fifteen feet; however, it also states that farm and agricultural buildings located down from ridgetops may exceed these height limits upon design review approval. As approved, the development includes a barn that will measure 25 feet in height. While the height of the barn does exceed the 15-foot limit established by the zoning, it is located down from the ridgetop and received design review approval from the Marin County Board of Supervisors, consistent with Zoning Code Section 22.57.024(1)(g)(B). Therefore, the Commission finds that the appeal raises no substantial issue regarding the conformity of the approved development project with the Zoning Code Section 22.57.024(1)(g)(B).

5.4 Appellants Contentions that are Not a Valid Ground for Appeal

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

As discussed below, one of the contentions raised in the appeal does not present potentially valid grounds for appeal in that it does not allege the project's inconsistency with policies and standards of the LCP.

5.4.1 Private Views

Contention

The appellant EAC contends that the approved development will be visible from private property.

Discussion

The appellants' contention does not include an allegation that the approved development is inconsistent with the policies of the certified LCP. As discussed in Section 5.2.1, the LCP protects public views; however, the LCP does not include provisions for the protection of private views. Therefore, the Commission finds that this contention is not a valid ground for appeal under Section 30603 of the Coastal Act because it does not contain an allegation that the approved development does not conform to the certified LCP.

PART TWO – DE NOVO ACTION ON APPEAL

STAFF NOTES

Procedure

If the Commission finds that a locally approved coastal development permit raises a Substantial Issue with respect to the policies of the certified LCP, the local government's approval no longer governs, and the Commission must consider the consistency of the proposed project with the certified LCP *de novo*. The Commission may approve, approve with conditions (including conditions different than those imposed by the County), or deny the application. Since the proposed project is within an area for which the Commission has certified a Local Coastal Program, the applicable standard of review for the Commission to consider is whether the development is consistent with Marin County's certified Unit II Local Coastal Program (LCP). Testimony may be taken from all interested persons at the *de novo* hearing.

Incorporation of Substantial Issue Findings

The Commission hereby incorporates by reference the Substantial Issue Findings above.

6.0 STAFF RECOMMENDATION

De Novo

Pursuant to Section 30625 of the Coastal Act and as discussed below, the staff recommends that the Commission determine that the development does not conform to the standards set forth in the certified local coastal program and the public access policies of the Coastal Act and **deny** the permit.

Motion

I move that the Commission approve Coastal Development Permit No. A-2-MAR-02-024 for the development proposed by the applicant.

Staff Recommendation

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Deny the Permit

The Commission hereby **denies** a coastal development permit for the proposed development on the ground that the development will not conform with the policies of the certified LCP. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

7.0 FINDINGS AND DECLARATIONS FOR DENIAL

7.1 Project Site and Description

Findings 3.1 and 3.2 of the Substantial Issue portion of this report regarding the project and site description are hereby incorporated by reference.

7.2 Analysis of LCP Consistency

As discussed below, the Commission is denying the proposed development because it would be inconsistent with certified LCP provisions intended to protect visual resources and agricultural land.

7.2.1 Agricultural Resources

LUP Agriculture Resource Policy 5(b) states:

All development shall be clustered to retain the maximum amount of land in agricultural production or available for agricultural use. Development, including all land converted from agricultural use such as roads and residential support facilities, shall be clustered on no more than five percent of the gross acreage, to the extent feasible, with the remaining acreage to be left in agricultural production and/or open space. Development shall be located close to existing roads and shall be sited to minimize impacts on scenic resources, wildlife habitat and streams, and adjacent agricultural operations. [Emphasis added.]

Zoning Code Section 22.57.024(1)(a) and (1)(d) C-ARP (Coastal agricultural, residential, planned districts) Design Standards states in relevant part:

- a. ... In areas where usable agricultural land exists, residential development shall be clustered or sited so as to minimize disruption of existing or possible future agricultural uses.*
- ...*
- d. Roads, Driveways and Utilities. The development of roads, driveways and utilities shall conform to the applicable standards contained in Title 24 of this*

code, including but not limited to Sections 24.04.020 through 24.04.320 (Roads and Driveways), and Sections 24.04.840 through 24.04.860 (Utilities). In areas with undeveloped agricultural land, efforts shall be made to keep road and driveway construction, grading and utility extensions to a minimum. This shall be accomplished through clustering and siting development so as to minimize roadway length and maximize the amount of undivided agricultural land. [Emphasis added.]

Zoning Code Section 22.57.035(1) C-APZ -- Coastal agricultural production zone districts Development Standards and Requirements states:

All development shall be clustered to retain the maximum amount of land in agricultural production or available for agricultural use. Development, including all land converted from agricultural use such as roads and residential support facilities, shall be clustered on no more than five percent of the gross acreage, to the extent feasible, with the remaining acreage to be left in agricultural production and/or open space. Development shall be located close to existing roads and shall be sited to minimize impacts on scenic resources, wildlife habitat and streams, and adjacent agricultural operations. [Emphasis added.]

LUP Agriculture Resource Policy 4 states in relevant part:

All land divisions and developments in the APZ shall require an approved master plan showing how the proposed division or development would affect the subject property. In reviewing a proposed master plan and determining the density of permitted unites, the County shall make all of the following findings:

- a. The development would protect and enhance continued agricultural use and contribute to agricultural viability.*
- b. The development is necessary because agricultural use of the property is no longer feasible. The purpose of this standard is to permit agricultural landowners who face economic hardship to demonstrate how development on a portion of their land would ease this hardship and enhance agricultural operations on the remainder of the property.*
- c. The land division of development would not conflict with the continuation or initiation of agriculture, on that portion of the property which is not proposed for development, on adjacent parcels, or those within one mile of the perimeter of the proposed development.*
- d. Adequate water supply, sewage disposal, road access and capacity and other public services are available to service the proposed development after provision has been made for existing and continued agricultural operations. Water diversions or use for a proposed development shall not adversely impact stream habitats or significantly reduce freshwater inflows to Tomales Bay, either individually or cumulatively.*

- e. *Appropriate public agencies are able to provide necessary services (fire protection, police protection, schools, etc.) to serve the proposed development.*
- f. *The proposed land division and/or development will have no significant adverse impacts on environmental quality or natural habitats, including stream or riparian habitats and scenic resources. In all cases, LCP policies on streams and natural resources shall be met.*
- g. *Development consists of permitted and conditional uses as authorized in the APZ.*

Zoning Codes Section 22.57.032 states in relevant part:

The following uses are permitted in all C-APZ districts subject to an approved master plan:

...

- 2. *One single-family dwelling per parcel. Parcel is defined as all contiguous assessor's parcels under common ownership (unless legally divided as per Title 20, Marin County Code). [Emphasis added.]*

Zoning Codes Section 22.57.032 states in relevant part:

The requirements of Chapter 22.45 may be waived by the planning director when:

- A. *One single-family dwelling unit is proposed for construction on a legal building site;*
- B. *A tentative map requiring a parcel map for four parcels or less is proposed, except in C-APZ districts;*
- C. *The planning director determines that a proposed development is minor or incidental in nature and within the intent and objectives of the local coastal plan. [Emphasis added.]*

Zoning Codes Section 22.57.032 states in relevant part:

The purpose of the agricultural production zone is to preserve lands within the zone for agricultural use. The principal use of lands in the C-APZ districts shall be agricultural. Development shall be accessory, incidental, or in support of agricultural land uses, and shall conform to the policies and standards as set forth in this chapter. [Emphasis added.]

As discussed in Section 3.2, the property is zoned C-APZ-60 (Coastal, Agricultural Production Zone, Planned District, one primary dwelling unit per 60 acres maximum density) and is located near the town of Marshall in West Marin. Agriculture is an integral part of this region. According to the LCP:

Agriculture is an important and widespread land use in Marin County, outside of the heavily populated Highway 101 corridor in eastern Marin. Out of 333,380 acres in the County, 139,010 acres or 42% of the total were devoted to agricultural uses in 1979. By far the bulk of this acreage, 96%, is used for pasture and range.

...

Approximately 27% of all agricultural land in Marin and 28% of the pasture and range is located in the Unit II coastal zone.

Agricultural land is increasingly being threatened by the rising cost of land and operations expenses. The LCP certified in 1981, predicted the current trend:

In the future, the major pressures on coastal agriculture are likely to come from rising land values combined with a desired coastal location which make agriculture less and less attractive, rather than from encroaching urbanization. Upward pressure on land values will reduce the economic appeal of continued agriculture production, particularly where little or no capital investment in agriculture has been made, such as for grazing. The effects of such pressure have already been felt in the Nicasio Valley where spreading large-lot residential uses are making continued agriculture more and more difficult. As the Nicasio Valley Community Plan notes,

“Escalating costs and land sale prices reflect a market for residential development and not for continued agriculture.” (Page 7)

It is likely that, without strict agricultural preservation policies, the gradual conversion of agricultural lands to rural residential uses will continue. [Emphasis added.]

The Unit II LCP contains policies and standards that are intended to protect Marin County’s significant agricultural resources. The proposed development is inconsistent with several of these policies.

7.2.1.1 Undivided Agricultural Land

Marin County LCP Zoning Section 22.57.024(1)(d) requires that in areas with undeveloped agricultural land, efforts be made to keep road and driveway construction, grading and utility extensions to a minimum, which shall be accomplished through clustering and siting development near existing roads. Moreover, LCP Agricultural Resource Policy 5(b) and Zoning Code Section 22.57.035(1) requires that development on agricultural land be located close to existing roads and Zoning Code Section 22.57.024(1)(a) requires that development be located in the most accessible portion of the site. While the development would use approximately one percent of the gross acreage of the property, it would be sited in the upper northern portion of the site. This location is not close to the existing road, State Highway 1, and thus would require the construction of a 3,720-foot long road to access the building site, bisecting a majority of the agricultural land and itself creating visual impacts. In addition to the long driveway, the location of the approved building site would require the considerable extension of utility lines.

As proposed, the project is not located in the most accessible portion of the site or near existing roads and does not minimize roadway length, grading, the extension of utility lines and would bisect undeveloped agricultural land. Therefore, the Commission finds that the proposed development is inconsistent with LCP Agricultural Resource Policy 5(b) and Zoning Code Sections 22.57.035(1), 22.57.024(1)(a), and 22.57.024(1)(d).

7.2.1.2 Development Accessory to Agriculture

Zoning Codes Section 22.57.032 defines the purpose of C-APZ Districts (Coastal Agricultural Production Zone District) as the following:

The purpose of the agricultural production zone is to preserve lands within the zone for agricultural use. The principal use of lands in the C-APZ districts shall be agricultural. Development shall be accessory, incidental, or in support of agricultural land uses, and shall conform to the policies and standards as set forth in this chapter. [Emphasis added.]

LUP Agriculture Resource Policy 4 further requires an approved master plan for C-APZ zoned land showing how the proposed development would affect the subject property and demonstrating how the proposed development is consistent with the following findings: (1) development shall protect and enhance continued agricultural use and contribute to agricultural viability; (2) development is necessary because agricultural use of the property is no longer feasible and would enhance agricultural operations on the remainder of the property; (3) the land division of development would not conflict with the continuation or initiation of agriculture, on that portion of the property which is not proposed for development, on adjacent parcels, or those within one mile of the perimeter of the proposed development; (4) adequate water supply, sewage disposal, road access and capacity and other public services are available to service the proposed development after provision has been made for existing and continued agricultural operations; (5) appropriate public agencies are able to provide necessary services (fire protection, police protection, schools, etc.) to serve the proposed development; (6) the development will have no significant adverse impacts on environmental quality or natural habitats, including stream or riparian habitats and scenic resources and that in all cases, LCP policies on streams and natural resources shall be met; and (7) development consists of permitted and conditional uses as authorized in the APZ. The master plan requirement may be waived pursuant to Zoning Code Section 22.56.026. Even so, Zoning Code Section 22.57.036 requires identical findings to those required by LUP Agriculture Resource Policy 4 whether or not a master plan is required for the proposed development (See Appendix A text of Zoning Code Section 22.57.036). Therefore, any proposed development must meet the above listed criteria.

Although C-APZ zoning allows for one single-family dwelling unit, proposed residential development must be accessory, incidental, or in support of agricultural land uses. As part of the proposed project, the applicants have submitted a Ranch Management Plan that evaluates and plans for the grazing of the property. While the Ranch Management Plan establishes sufficient water is available to serve the proposed agricultural use of the property, it also states that the area best suited for the development of facilities for a cattle operation is the northern portion of the property at the site of the existing derelict corrals because this site provides protection from the

prevailing winds and is accessible by truck for animal transport and care. As proposed, the development would be located in the exact location recommended for the agricultural facilities. In addition, the location of the residential development is such that it requires that the driveway traverse the agricultural land. Furthermore, the applicants have leased the property to a Marin rancher who is currently grazing cattle on the property.

As such, the proposed residential development would not be accessory, incidental or in support of the agricultural use of the property and it would neither protect and enhance the continued agricultural use nor contribute to agricultural viability of the property for the following reasons: (1) the house is not needed for, in support of, or accessory to the agricultural use of the property; (2) rather than serve the rancher, the single-family residential development would serve the landowners who will not be engaged in agricultural activities; (3) the single-family residence is located within the area recommended by the Ranch Management Plan as the preferred location for a corral; and (4) the location of the residential development requires a road that traverses the agricultural land. The applicants have not demonstrated that agricultural use of the property is no longer feasible and that residential development is necessary to allow continued agricultural operations on the remaining portions of the property. Therefore the proposed development is inconsistent with Zoning Code Sections 22.57.032 and 22.57.036 and must be denied.¹

7.2.1.3 Master Plan

The Marin County Unit II LCP Agricultural Resource Policy 4 and Zoning Code Standard 22.57.32 requires the approval of a Master Plan for all land division and development in the Agricultural Production Zone (APZ). Under Zoning Code Section 22.56.026, this requirement can be waived by the planning director only when:

- A. *One single-family dwelling unit is proposed for construction on a legal building site;*
- B. *A tentative map requiring a parcel map for four parcels or less is proposed, except in C-APZ districts;*
- C. *The planning director determines that a proposed development is minor or incidental in nature and within the intent and objectives of the local coastal plan.*

¹ The County, in its approval of the project, attempted to clarify the principal use of the property by requiring a “Deed of Agricultural Conservation Easement” to the Marin Agricultural Land Trust (MALT). The easement’s intent was to ensure in perpetuity the agricultural use of the property. Through the easement, the landowner would be obligated to use the land for agricultural purposes, find a lessee who would do so, or allow MALT to lease the agricultural use to an interested party. While the Commission recognizes the County’s innovative approach, it also finds that the end result does not necessarily preserve agriculture, because it facilitates residential development that is not accessory to or in support of agriculture. Thus, the project arguably aggravates the market trends that are threatening agricultural lands. The approved approach also results in unacceptable impacts to other coastal resources. In exchange for the easement, the applicants were permitted to site their house in a location that is inconsistent with many LCP policies. The Commission acknowledges that the County is seeking solutions to address the larger issues of conversion of agricultural to residential use; however, this issue should be addressed through the ongoing update of the County’s LCP where it can be analyzed in more depth.

As stated, the project site is zoned C-APZ-60. In order to develop the property under Agricultural Resource Policy 4 and Zoning Code Standard 22.57.32, a Master Plan is required approved unless, in part, the approving authority determines that the proposed development is “minor or incidental” or “within the intent and objectives of the LCP.” The County in its approval of the proposed project waived the requirement for a Master Plan because: (1) the project consists of a proposal to construct one single-family residence; (2) the applicants have submitted an application for Coastal Permit and Design Review that addresses all relevant issues that would be addressed in a Master Plan; and (3) as a condition of approval the applicants were required to convey a “Deed of Agricultural Conservation Easement” to the Marin Agricultural Land Trust that would extinguish all potential future subdivision of the subject property and include provisions to ensure the long-term agricultural use of the property.

However, according to Zoning Code Section 22.56.026, to qualify for a Master Plan waiver a development must meet the three criteria listed above in A-C. Although the proposed development includes one single-family dwelling unit proposed for construction on a legal building site, it does not meet requirement A because it includes a guest house and barn. (In this case, Requirement B is not applicable because the project does not include a subdivision.) Furthermore, the proposed development is not minor or incidental in nature or within the intent and objectives of the local coastal plan as mandated by requirement C. As discussed in Sections 7.2.1 and 7.2.3, the proposed development is significant in nature and is inconsistent with Unit II LCP provisions for the protection of visual and agricultural resources. Consequently, the appropriate findings cannot be made under Zoning Code Section 22.56.026 to waive the Master Plan requirement.

The CDP application does not include a proposed Master Plan as required by the Unit II LCP. Other provisions of the certified LUP and zoning also independently require the analysis required to be undertaken in preparing the master plan. As discussed above, the proposed development application does not provide this analysis or establish that it meets each of these requirements. Therefore, the Commission finds that the proposed development is inconsistent with Agricultural Resource Policy 4 and Zoning Code Standard 22.57.32 that require the approval of a Master Plan for all development in the Agricultural Production Zones and must be denied.

7.2.2 Visual Resources

LUP New Development and Land Use Visual Resource Policy 3(a) states:

The height, scale, and design of new structures shall be compatible with the character of the surrounding natural or built environment. Structures shall be designed to follow the natural contours of the landscape and sited so as not to obstruct significant views as seen from public viewing places.

LUP Agriculture Resource Policy 5(b) states in relevant part:

Development shall be located close to existing roads and shall be sited to minimize impacts on scenic resources, wildlife habitat and streams, and adjacent agricultural operations. [Emphasis added.]

Zoning Code Section 22.57.035(1) C-APZ -- Coastal agricultural production zone districts Development Standards and Requirements states in relevant part:

Development shall be located close to existing roads and shall be sited to minimize impacts on scenic resources, wildlife habitat and streams, and adjacent agricultural operations. [Emphasis added.]

Zoning Code Section 22.57.024(1)(a) C-ARP (Coastal agricultural, residential, planned districts) Design Standards states in relevant part:

Clustering. Buildings shall be clustered or sited in the most accessible, least visually prominent, and most geologically stable portion or portions of the site. Clustering or siting buildings in the least visually prominent portion or portions of the site is especially important on open grassy hillsides. In these areas, the prominence of construction shall be minimized by placing buildings so that they will be screened by existing vegetation, rock outcroppings or depressions in topography. [Emphasis added.]

Zoning Code Section 22.57.036(6) C-APZ -- Coastal agricultural production zone districts Development Standards and Requirements states:

The proposed land division and/or development will have no significant adverse impacts on environmental quality or natural habitats, including stream or riparian habitats and scenic resources. In all cases, LCP policies on streams and natural resources shall be met. [Emphasis added.]

The proposed project is located on a hillside parcel east of Tomales Bay. The hillsides in this area are relatively pristine grasslands, creating a unique pastoral landscape that contrasts sharply with the forested land west of the bay. The value of the scenic qualities of this landscape are officially recognized by the Unit II LCP:

Tomales Bay and adjacent lands in the Unit II coastal zone form a scenic panorama of unusual beauty and contrast. The magnificent visual character of Unit II lands is a major attraction to the many tourists who visit the area, as well as to the people who live there.

As discussed above, the LCP not only acknowledges the landscape as an important visual resource, but also emphasizes the value it holds for the public. In fact, the public can view the grassy hills from many locations such as Point Reyes National Seashore, Tomales Bay, and State Highway 1.

The Unit II LCP also draws attention to the sensitivity of this scenic resource to the impacts of new development:

New development in sensitive visual areas, such as along the shoreline of Tomales Bay and on the open rolling grasslands east of the Bay, has the potential for significant adverse visual impacts unless very carefully sited and designed.

To protect scenic resources, the LCP contains clear and strong visual resource protection policies and zoning standards. LCP Visual Resource Policy 3(a) requires that the height, scale, and design of new structures be compatible with the character of the surrounding natural or built environment. Existing residential development in this area is primarily concentrated along the shoreline of Tomales Bay and at the base of the hillsides just west of State Highway 1. Commission staff has not inventoried the size, scale, and design of existing residential

development in the area, but development near the highway is generally of ranch or Victorian style and of moderate size. Development located at higher elevations consists principally of structures associated with agricultural operations. Marin County staff's memorandum to the Planning Commission dated October 24, 2001 states that a review of County permits indicates that the larger agricultural parcels along State Highway 1 within the surrounding area zoned C-APZ-60 are vacant parcels with the exception of a 60-acre parcel north of the project site. This parcel north of the project site is developed with a 2,500 square-foot residence and 800 square-foot barn. As discussed in Section 3.2, the proposed development consists of approximately 4,386 square feet of development surrounding an approximately 4,600-square-foot central courtyard. The proposed development would effectively create a nearly 10,000-square foot compound. A comparison of the size of existing residential development indicates that the proposed project is of a much larger scale, and is thus inconsistent with LCP Visual Resource Policy 3(a).

Furthermore, the proposed development is not sited or designed in a manner that is compatible with the natural landscape. As proposed, the residential development is sited two-thirds of a mile from State Highway 1 on the upper portion of the hillside, which requires a 3,720-foot long gravel driveway to access the site. The configuration of the driveway is such that it traverses the grassy hillside. As sited, the proposed residence and driveway significantly disrupt the continuity of the relatively pristine grasslands. As such, the proposed residential development and driveway are not compatible with the natural landscape, inconsistent with LCP Visual Resource Policy 3(a).

LCP Visual Resource Policy 3(a) also requires that structures be designed to follow the natural contours of the landscape and sited so as not to obstruct significant views as seen from public viewing places. Both LUP Agriculture Resource Policy 5(b) and Zoning Code Section 22.57.035(1) require that on agricultural parcels, development be located close to existing roads and sited to minimize impacts on scenic resources. Zoning Code Section 22.57.024(1)(a) also requires that buildings be clustered or sited in the least visually prominent portion or portions of the site and that clustering or siting buildings in the least visually prominent portion or portions of the site is especially important on open grassy hillsides. Furthermore, Zoning Code Section 22.57.036(6) requires that development have no significant adverse impacts on scenic resources.

The proposed project would be visible from public viewing places. As proposed, the development would be located approximately two-thirds of a mile away from State Highway 1 on the upper portion of the property. An existing stand of California bay laurel trees downslope of the building site would serve as partial screening for the proposed development; however, portions of the development would still be visible from public locations such as Point Reyes National Seashore and the waters of Tomales Bay.

During a recent site visit, Commission staff photographed the western view from the building site. From this viewpoint, portions of Tomales Bay, and wide sections of the hills west of the bay were observable, indicating that the proposed development would be visible from those locations by the public (Exhibit 6, Photographs from site). To verify this observation, Commission staff also visited Heart's Desire Beach in the Point Reyes National Seashore (PRNS), a point located across the bay, and noted that the existing vegetation did not screen the entire development site (Exhibit 7, Photographs of site from Heart's Desire Beach). Furthermore, PRNS completed a preliminary Geographic Information System (GIS) visual

analysis, which demonstrated that the proposed development would be visible from major trails, roadways, and other scenic viewpoints, significantly impacting the visual quality of the viewshed as seen from public parklands. In addition to the main residence, the proposed driveway would significantly impact visual resources. Although only proposed to measure 12 feet in width, the driveway would stretch 3,720 feet from the highway across the property to the proposed building site disrupting the relatively pristine grassy landscape.

As proposed, the development is neither designed nor sited in a manner that would screen it from public viewing places and would result in a roadway that stretches most of the length of the property, thereby significantly impacting visual resources. Alternative building sites exist that would better conform to the siting requirements of the LCP. For example, the development could be sited at the lower portion of the property adjacent to Highway 1. Clustering the development near the highway would substantially reduce the length of the access road and would minimize the visual impacts of the development as viewed from Point Reyes and other public viewing areas. Thus, the proposed development is not sited close to existing roads and in the least visually prominent location of the site in conflict with the requirements of the LCP. Thus, the Commission finds that the proposed development is inconsistent with LCP Visual Resource Policy 3(a), Agriculture Resource Policy 5(b) and Zoning Code Sections 22.57.035(1), 22.57.036(6) and 22.57.024 (a). Therefore, the proposed development must be denied.

7.2.3 Alternatives

Denial of the proposed permit will not eliminate all economically beneficial or productive use of the applicant's property or unreasonably limit the owner's reasonable investment backed expectations of the subject property. Denial of this amendment request to construct a one story, 23-foot high, 3,113-square-foot single-family residence, 336-square-foot detached guesthouse, 937-square-foot detached garage/garden storage building that form a complex around an approximately 4,600-square-foot central courtyard would still leave the applicant available alternatives to use the 206.9 acre property in a manner that would be consistent with the policies of the LCP.

The applicants could propose a residential development that would be consistent with the visual and agricultural resource protection policies of the LCP. For example, a more modest residence, similar in scale and design to existing development in the surrounding area and located close to State Highway 1 could be found compatible with the character of the surrounding natural and built environment, consistent with the Unit II LCP. Presently, no such analysis of this alternative been completed.

Therefore, the Commission finds that feasible alternatives to the proposed project exist for the applicant to make economically beneficial or productive use of the property in a manner that would be consistent with the policies of the certified LCP.

7.3 California Environmental Quality Act (CEQA)

Section 13906 of the California Code of Regulation requires Coastal Commission approval of a coastal development permit application to be supported by a finding showing that the application, as modified by any conditions of approval, is consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Public Resources Code

Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse impact that the activity may have on the environment.

The proposed project is not consistent with the policies of the certified LCP regarding visual and agricultural resource protection including policies requiring that the proposed development protect and enhance continued agricultural use and contribute to agricultural viability and that it is sited in near existing roads and minimizes roadway length, grading, the extension of utility lines and maximizes the amount of undeveloped agricultural land, as well as policies requiring that development minimize impacts on visual resources. There are feasible mitigation measures and feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment. Therefore, the Commission finds that the proposed project cannot be found consistent with the requirements of the Coastal Act to conform to CEQA.

Exhibits:

1. Location Map
2. Vicinity Map
3. Site Map and elevations
4. Appeal by Commissioners Wan and Desser
5. Appeal by EAC
6. Photographs from site
7. Photographs of site from Heart's Desire Beach

Appendix A: MARIN COUNTY LCP ZONING CODE SECTION 22.57.036 RELATED TO DEVELOPMENT ON C-APZ LAND

Zoning Code Section 22.57.036 states:

Required Findings. Review and approval of development permits including a determination of density shall be subject to the following findings:

- 1. The development will protect and enhance continued agricultural use and contribute to agricultural viability.*
- 2. The development is necessary because agricultural use of the property is no longer feasible. The purpose of this standard is to permit agricultural landowners who face economic hardship to demonstrate how development on a portion of their land would ease this hardship and enhance agricultural operations on the remainder of the property.*
- 3. The land division of development will not conflict with the continuation or initiation of agriculture, on that portion of the property which is not proposed for development, on adjacent parcels, or those within one mile of the perimeter of the proposed development.*
- 4. Adequate water supply, sewage disposal, road access and capacity and other public services are available to service the proposed development after provision has been made for existing and continued agricultural operations. Water diversions or use for a proposed development shall not adversely impact stream habitats or significantly reduce freshwater inflows to Tomales Bay, either individually or cumulatively.*
- 5. Appropriate public agencies are able to provide necessary services (fire protection, police protection, schools, etc.) to serve the proposed development.*
- 6. The proposed land division and/or development will have no significant adverse impacts on environmental quality or natural habitats, including stream or riparian habitats and scenic resources. In all cases, LCP policies on streams and natural resources shall be met.*